IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

Bail Appl..No. 3804 of 2007()

CRIME NO.448/2007 OF MANNARKAD POLICE STATION

PETITIONER : ACCUSED

SHAMEER BABU, AGED 21 YEARS
S/O.MODHEEN, PHALLACHIRA VEEDU
KOOTIIKKADAVU, THOMBRA.P.O.
OTTAPPALAM, PALGHAT

BY ADV. SRI.MANSOOR.B.H.

RESPONDENTS:

STATION HOUSE OFFICER
MANNARKKADU POLICE STATION
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI. S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.3804 of 2007

Dated this the 25th day of June 2007

O R D E R

Application for anticipatory bail. The petitioner is a person aged about 21 years now. He is alleged to have committed rape on the prosecutrix, the daughter of the defacto complainant on 15/12/2006. The victim, a girl, aged less than fifteen years, at the time of occurrence, allegedly conveyed the information regarding the offence to her mother on 15/12/2006, the date of the crime itself. The father of the defacto complainant, who is employed abroad, was informed. It was decided that no complaint shall be made which would only affect the good name of the victim girl. The victim girl was later married; but subsequently her husband and in-laws came to know of the incident. She was divorced and sent back to her parental home. It was in these circumstances that the complaint dated 15/6/2007 was filed before the learned Magistrate. The same was referred to the police under Section 156(3) Cr.P.C. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations against him are totally false. They are raised on account of malicious motive. At any rate, the long delay in filing the complaint - from 15/12/2006 to 15/06/2007 - remains unexplained satisfactorily. In these circumstances, directions under Section 438 Cr.P.C may be issued in favour of the petitioner, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the culpable indiscretion committed by the petitioner has marred the life of a young girl aged below 15 years, on the date of the crime. In these circumstances, serious view may be taken. At any rate, this is not a fit case where anticipatory bail can or ought to be granted to the petitioner. The petitioner may be directed to follow the ordinary and normal procedure of surrendering before the investigating officer or the learned Magistrate having jurisdiction and seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. Having rendered very anxious consideration to all the relevant inputs, I am certainly not persuaded to invoke the

extraordinary inherent jurisdiction available under Section 438 Cr.P.C. Such jurisdiction is not to be invoked, as a matter of course. Satisfactory and compelling reasons must be shown to exist to justify the invocation of such equitable discretion in favour of the petitioner. I cannot lose sight of the fact that the victim is a young girl aged below 15 years at the time of occurrence. The delay appears to have been explained satisfactorily atleast at the present stage. I am not satisfied that directions under Section 438 Cr.P.C can be invoked.

5. In the result, this petition is dismissed. But I may hasten to observe that it shall be open to the petitioner to surrender before the investigating officer or the learned Magistrate having jurisdiction and if the petitioner thereafter applies for bail after giving sufficient prior notice to the prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007